

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MELISSA TERRILL, et al.,

Plaintiffs,

v.

BNSF RAILWAY COMPANY,

Defendant.

Case No. 1:23-cv-00611-CDB

**SCHEDULING ORDER** (Fed. R. Civ. P. 16)

Discovery Deadlines:

Non-Expert: May 13, 2024

Expert: July 24, 2024

Mid-Discovery Conf.: April 1, 2024

Non-Dispositive Motion Deadlines:

Filing: August 8, 2024

Hearing: September 12, 2024

Dispositive Motion Deadlines:

Filing: October 10, 2024

Hearing: November 21, 2024

Pre-Trial Conf.: January 7, 2025 (10:30am)

510 19th Street, Bakersfield

Trial: March 3, 2025 (8:30am)

510 19th Street, Bakersfield (4-5 days)

Plaintiffs are the successors in interest of Anthony Terrill, Jr. (the Decedent). Plaintiffs aver that the Decedent was struck by a train in or about Bakersfield and died of his injuries. The parties dispute whether the Decedent failed to heed warnings from the train and whether this matter is preempted by the Federal Railroad Safety Act.

1 The parties convened for a scheduling conference on October 4, 2023. Seth O' Dell appeared  
2 on behalf of Plaintiffs. Jason Schaff appeared on behalf of Defendant.

3 **I. Fictitiously-Named Defendants**

4 All claims as to "Doe" Defendants, including any counterclaims and cross-claims, are hereby  
5 **Dismissed.**

6 **II. Pleading Amendment**

7 Any motions to amend the pleadings must be filed by **December 8, 2023**. The parties should  
8 not construe a timely filing of a motion or stipulation requesting leave to amend the pleadings to  
9 necessarily constitute good cause to modify the existing schedule, if necessary. All proposed  
10 amendments must (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment  
11 requires any modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975  
12 F.2d 604, 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment  
13 is not (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or  
14 (4) futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

15 **III. Discovery Plan and Cut-Off Date**

16 The parties have exchanged their initial disclosures required by Fed. R. Civ. P. 26(a)(1).

17 The parties are ordered to complete all discovery pertaining to non-experts on or before **May**  
18 **13, 2024**, and all discovery pertaining to experts on or before **July 24, 2024**.

19 The parties are directed to disclose all expert witnesses, in writing, on or before **May 27, 2024**,  
20 and to disclose all rebuttal experts on or before **June 25, 2024**. The written designation of retained  
21 and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and  
22 shall include all information required thereunder. Failure to designate experts in compliance with this  
23 order may result in the Court excluding the testimony or other evidence offered through such experts  
24 that are not disclosed pursuant to this order.

25 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to  
26 experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions  
27 included in the designation. Failure to comply may result in the imposition of sanctions, which may  
28 include striking the expert designation and preclusion of expert testimony.

1 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement  
2 disclosures and responses to discovery requests will be strictly enforced.

3 A mid-discovery status conference is scheduled for **April 1, 2024**, at 9:30 a.m. before  
4 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference  
5 report no later than **one week before the conference**. Counsel also SHALL lodge the status report via  
6 e-mail to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery  
7 counsel have completed and that which needs to be completed as well as any impediments to  
8 completing the discovery within the deadlines set forth in this order. Counsel SHALL discuss  
9 settlement and certify in the joint status report (1) that they have met/conferred regarding settlement,  
10 and (2) proposed dates for convening a settlement conference with an unassigned magistrate judge.

11 **IV. Pre-Trial Motion Schedule / Informal Discovery Dispute Conferences**

12 All non-dispositive pre-trial motions, including any discovery motions, shall be filed by  
13 **August 8, 2024<sup>1</sup>** and heard on or before **September 12, 2024**. For these hearings and at the direction  
14 of the Courtroom Deputy Clerk, the Court may direct counsel to appear remotely (via Zoom). For  
15 hearings noticed to occur in-person, the Court may permit counsel to appear remotely (via Zoom)  
16 provided the Courtroom Deputy Clerk receives a written notice of the request to appear remotely no  
17 later than five court days before the noticed hearing date.

18 No motion to amend or stipulation to amend the case schedule will be entertained unless it is  
19 filed at least three days before the first deadline the parties wish to extend.

20 No written discovery motions shall be filed without the prior approval of Magistrate Judge  
21 Baker. A party with a discovery dispute must first confer with the opposing party in a good faith  
22 effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the  
23 requesting party promptly shall seek a conference with all involved parties and Magistrate Judge  
24 Baker. To schedule this conference, the parties should contact the Courtroom Deputy Clerk, Susan  
25 Hall, at (661) 326-6620 or via email at SHall@caed.uscourts.gov. At least two days before the  
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27 <sup>1</sup> Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable  
28 time of discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert  
discovery deadline.

1 conference, counsel SHALL file a joint, informal letter brief detailing each party's position. Each  
2 party's narrative shall not exceed three pages, excluding exhibits. At the commencement of the  
3 conference, if the parties jointly agree to Magistrate Judge Baker's consideration and resolution of the  
4 discovery disputes outside the formal Local Rule 251 procedures, the Court will entertain arguments  
5 by the parties and issue a ruling. If the parties do not jointly agree to the informal discovery dispute  
6 resolution procedures set forth herein, the requesting party may then seek relief through motion to  
7 compel. Counsel must comply with Local Rule 251 with respect to discovery disputes or the motion  
8 will be denied without prejudice and dropped from the Court's calendar.

9 All dispositive pre-trial motions shall be filed no later than **October 10, 2024**, and heard on or  
10 before **November 21, 2024**. Motions are heard before Magistrate Judge Baker at 10:30 a.m., at the  
11 United States District Courthouse, 510 19th Street, Bakersfield, CA.

12 **V. Motions for Summary Judgment or Summary Adjudication**

13 At least 21 days before filing a motion for summary judgment or motion for summary  
14 adjudication, the parties SHALL meet, in person or by telephone, to confer about the issues to be  
15 raised in the motion.

16 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a  
17 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole  
18 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the  
19 issues for review by the court; 5) explore the possibility of settlement before the parties incur the  
20 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

21 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed  
22 statement of undisputed facts **at least five days before** the conference. The finalized joint statement  
23 of undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be  
24 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint  
25 statement of undisputed facts.

26 In the notice of motion, the moving party SHALL certify that the parties have met and  
27 conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.  
28 Failure to comply may result in the motion being stricken.

1 **VI. Pre-Trial Conference**

2 **January 7, 2025**, at 10:30 a.m., located at the United States District Courthouse, 510 19<sup>th</sup>  
3 Street, Bakersfield, CA, before Magistrate Judge Baker.

4 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The  
5 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly  
6 to Magistrate Judge Baker's chambers, by email at CDBorders@caed.uscourts.gov.

7 Counsels' attention is directed to Rules 281 and 282 of the Local Rules for the Eastern District  
8 of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will  
9 insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules,  
10 the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to  
11 explain the nature of the case to the jury during voir dire.

12 **VII. Trial Date**

13 **March 3, 2025**, at 8:30 a.m., located at the United States District Courthouse, 510 19<sup>th</sup> Street,  
14 Bakersfield, CA, before Magistrate Judge Baker.

15 A. This is a jury trial

16 B. Counsels' Estimate of Trial Time: 5 days

17 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of  
18 California, Rule 285.

19 **VIII. Settlement Conference**

20 The parties SHALL meet and confer and notify the Court prior to the Pre-Trial Conference  
21 whether they wish to convene a Settlement Conference. In the event the parties request a Settlement  
22 Conference, unless otherwise permitted in advance by the Court, the attorneys who will try the case  
23 shall appear at the settlement conference **with the parties** and the person or persons having full  
24 authority to negotiate and settle the case on any terms<sup>2</sup> at the conference. Consideration of settlement  
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26 <sup>2</sup> Insurance carriers, business organizations, and governmental bodies or agencies whose settlement  
27 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like  
28 shall be represented by a person or persons who occupy high executive positions in the party organization and  
who will be directly involved in the process of approval of any settlement offers or agreements. To the extent  
possible, the representative shall have authority, if he or she deems it appropriate, to settle the action on terms  
consistent with the opposing party's most recent demand.

1 is a serious matter that requires preparation prior to the settlement conference. Set forth below are the  
2 procedures the Court will employ, absent good cause, in conducting the conference.

3 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to  
4 Defendant via fax or e-mail, a written itemization of damages and a meaningful<sup>3</sup> settlement demand  
5 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than  
6 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an  
7 acceptance of the offer or with a meaningful counteroffer which includes a brief explanation of why  
8 such a settlement is appropriate.

9 If settlement is not achieved, each party SHALL attach copies of their settlement offers to their  
10 Confidential Settlement Conference Statement, as described below. Copies of these documents shall  
11 not be filed on the court docket.

12 CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

13 At least five court days prior to the settlement conference, the parties shall submit a  
14 Confidential Settlement Conference Statement via email directly to the chambers of the unassigned  
15 magistrate judge referred to the settlement conference. The statement should not be filed with the  
16 Clerk of the Court nor served on any other party, although the parties may file a Notice of Lodging of  
17 Settlement Conference Statement. Each statement shall be clearly marked "confidential" with the date  
18 and time of the settlement conference indicated prominently thereon.

19 The Confidential Settlement Conference Statement shall include the following:

- 20 A. A brief statement of the facts of the case.
- 21 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon  
22 which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the  
23 claims and defenses; and a description of the major issues in dispute.
- 24 C. A summary of the proceedings to date.
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27 <sup>3</sup> "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to the  
28 offering party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to  
the other party. If, however, the offering party is only willing to offer a settlement which it knows the other party  
will not accept, this should trigger a recognition the case is not in a settlement posture and the parties should  
confer about continuing or vacating the settlement conference via stipulation.

- 1 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.  
2 E. The relief sought.  
3 F. The party's position on settlement, including present demands and offers and a history  
4 of past settlement discussions, offers and demands.

5 **IX. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten**  
6 **Trial**

7 The parties request bifurcation on the issue of punitive damages.

8 **X. Related Matters Pending**

9 There are no pending related matters.

10 **XI. Compliance with Federal Procedure**

11 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure  
12 and the Local Rules of the Eastern District of California, and to keep abreast of any amendments  
13 thereto. The Court requires compliance with these Rules to efficiently handle its increasing case load.

14 **XII. Effect of this Order**

15 The foregoing order represents the best estimate of the court and counsel as to the agenda most  
16 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the  
17 parties determine at any time that the schedule outlined in this order cannot be met, counsel are  
18 ordered to notify the court immediately of that fact so that adjustments may be made, either by  
19 stipulation or by subsequent status conference.

20 **The dates set in this Order are considered to be firm and will not be modified absent a**  
21 **showing of good cause even if the request to modify is made by stipulation. Stipulations**  
22 **extending the deadlines contained herein will not be considered unless they are accompanied by**  
23 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**  
24 **for granting the relief requested.**

25 IT IS SO ORDERED.

26 Dated: **October 6, 2023**

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28 UNITED STATES MAGISTRATE JUDGE